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5 Attorneys for Plaintiff
6 SAN RAFAEL CITY SCHOOLS

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9 SAN RAFAEL CITY SCHOOLS
10 Plaintiff,

11 v.

12 OFFICE OF ADMINISTRATIVE HEARINGS,
13 Defendant.
14

Case No.C07-04702 WHA
Related Case No. C07-5751 WHA

DECLARATION OF DAVID LYON IN
SUPPORT OF MOTION FOR
ADMINISTRATIVE RELIEF FOR
COORDINATION AND CLARIFICATION
OF BRIEFING SCHEDULE (Local Rules
7.11, 6.3)

15 Related Case:

16 T.M., a minor,
17 Plaintiff,

18 v.

19 SAN RAFAEL CITY SCHOOLS,
20 Defendant,

Date: December 5, 2007
Location: Courtroom 9, 19th Floor
450 Golden Gate Avenue
San Francisco, California 94102
Hon. William H. Alsup

21 I, David Lyon, hereby declare:

22 1. I am attorney licensed to practice law in this state and before this court, and am associated with
23 the law firm of Ruiz & Sperow, counsel of record for Plaintiff San Rafael City Schools ("the District")
24 in this matter. The following is known to me based upon personal knowledge or where indicated is
25 based on information and belief which I believe to be true and correct. If called as a witness, I could
26 and would competently testify thereto.

27 2. This complaint ("the District's appeal") constitutes an appeal, pursuant to 20 U.S.C.
28 §1415(i)(2)(A), of the decision of the Office of Administrative Hearings ("OAH"), dated August 13,

2007, (the “administrative decision”) regarding the due process complaint brought by T.M. (“the student”), a special education student, under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400, *et seq.*, and enacting California statutes, Education Code Sections 56000, *et seq.* On November 30, 2007, this court ordered the case of TM v. San Rafael City Schools, Case No. C07-5751 WHA, which constitutes Real Party’s appeal of that same decision (“Real Party’s appeal”), related to this matter.

3. Pursuant to this court’s “Procedural Order in Actions for Review On an Administrative Record,” (“Scheduling Order”), a true and correct copy of which is attached as Exhibit 1 hereto, a briefing schedule was established for the District’s appeal. The Scheduling Order provides that:

- 1) Defendant shall serve and file an answer, together with a certified copy of the transcript of the administrative record, within ninety days of receipt of service of the summons and complaint.
- 2) Plaintiff shall serve and file a motion for summary judgment or for remand within thirty days of service of defendant’s answer.
- 3) Defendant shall serve and file any opposition or counter-motion within thirty days of service of plaintiff’s motion.
- 4) Plaintiff may serve and file a reply within fourteen days of service of defendant’s opposition or counter-motion.

4. Based on information relayed to me by an employee of the Office of Administrative Hearings, Real Party appears to have obtained the hearing transcript on October 26, 2007, a month before lodging it with the court on November 27, 2006.

5. Real Party served its answer to the District’s appeal on November 26, 2007, and served a notice of lodging of the administrative record with the court on November 27, 2007. However, Real Party did not serve a copy of the administrative record on the District at the time. Instead, Real Party only served the administrative record on the District on December 5, 2007 at 11:30 a.m.

6. This delay in service of the administrative record has caused prejudice to the District as the District relied on provisions of this court’s Scheduling Order requiring service of the administrative record, and in particular the transcript of the six day administrative hearing, along with service of Real Party’s answer, to use in preparation of its motion for summary judgment, rather than independently

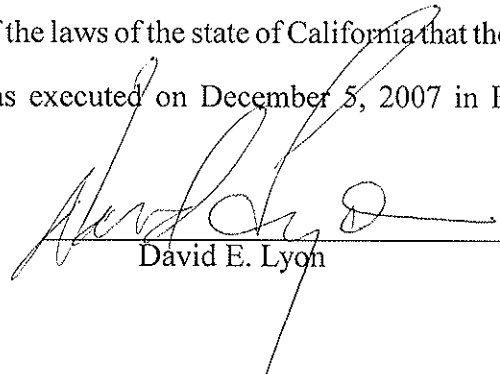
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obtaining a copy of that transcript. Unless the 30 day time period is deemed to run from the date Real Party complied with the court's requirement of service of the administrative record, the District will have suffered prejudice in preparing its motion for summary judgment due to the delay between service of the answer and service of the administrative record 9 days later. That 9 day delay is significant given that the Scheduling Order only grants the District 30 days from the date of service of Real Party's answer to file and serve its motion for summary judgment.

7. The District proposed a coordinated briefing schedule with Real Party in my December 4, 2007, letter to Margaret Broussard, a true and correct copy of which is hereto as Exhibit 2. Real Party declined that invitation. Email from Margaret Broussard to David Lyon dated December 4, 2007, 11:42 a.m., a true and correct copy of which is attached hereto as Exhibit 3; *see* Letter of David Lyon to Margaret Broussard dated December 3, 2007, a true and correct copy of which is attached hereto as Exhibit 2. (This letter mistakenly suggests that the administrative record was served with the answer; in fact, as attested by Real Party's proof of service filed with this court, the administrative record was only served on December 5, 2007.) The District also sought agreement from Real Party that the 30 day deadline only ran from the time that the administrative record which was to accompany Real Party's answer was also served. Emails from David Lyon to Margaret Broussard, dated December 4, 2007, 2:25 p.m., and December 5, 2007, 9:15 a.m., true and correct copies of which are attached hereto as Exhibit 3. Real Party insisted that the time ran from the time of his service of the answer alone, despite the failure to serve the administrative record with it. Email from Margaret Broussard, dated December 4, 2007, 5:07 p.m., true and correct copies of which are attached hereto as Exhibit 3.

I hereby declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct and that this Declaration was executed on December 5, 2007 in Emeryville, California.



David E. Lyon

EXHIBIT 1

9194

Pleading
E-Filing

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PROCEDURAL ORDER IN ACTIONS FOR REVIEW ON AN ADMINISTRATIVE RECORD

CASE NO. 07-4702

TO THE PARTIES AND COUNSEL OF RECORD IN THE ABOVE ACTION:

The above action seeks a review per of a decision by the Office of Administrative Hearings (OAH) pursuant to 20 U.S.C. § 1415(i)(2)(A). The parties are reminded that the Court's jurisdiction is limited to reviewing the administrative record to determine whether the decision is supported by substantial evidence in the record, and whether the OAH complied with the requirements of the statutes in reaching the decision reviewed.

IT IS HEREBY ORDERED that the referral to the ADR Multi-Option Program is withdrawn and all presently scheduled dates are vacated. Pursuant to Civil L.R. 16-5, IT IS FURTHER ORDERED that :

1. Defendant shall serve and file an answer, together with a certified copy of the transcript of the administrative record, within ninety days of receipt of service of the summons and complaint.

2. Plaintiff shall serve and file a motion for summary judgment or for remand within thirty days of service of defendant's answer.

3. Defendant shall serve and file any opposition or counter-motion within thirty days of service of plaintiff's motion.

4. Plaintiff may serve and file a reply within fourteen days of service of defendant's opposition or counter-motion.

5. Unless the court orders otherwise, upon the conclusion of this briefing schedule, the matter will be deemed submitted for decision without oral argument.

DATED: October 1, 2007


WILLIAM ALSUP

UNITED STATES DISTRICT JUDGE

Gretchen Trupiano

From: ECF-CAND@cand.uscourts.gov
Sent: Tuesday, October 02, 2007 3:23 PM
To: efiling@cand.uscourts.gov
Subject: Activity in Case 3:07-cv-04702-WHA San Rafael City Schools v. Office of Administrative Hearings Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court
Northern District of California
Notice of Electronic Filing or Other Case Activity

NOTE: Please read this entire notice before calling the Help Desk. If you have questions, please email the Help Desk by replying to this message; include your question or comment along with the original text.

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If there are **two** hyperlinks below, the first will lead to the docket and the second will lead to an e-filed document.

If there is no second hyperlink, there is no electronic document available .

See the FAQ posting 'I have a Notice of Electronic Filing that was e-mailed to me but there's no hyperlink...' on the ECF home page at <https://ecf.cand.uscourts.gov> for more information.

The following transaction was received from entered on 10/2/2007 3:22 PM and filed on 10/2/2007

Case Name: San Rafael City Schools v. Office of Administrative Hearings

Case Number: 3:07-cv-4702

Filer:

Document Number: 7

Docket Text:

PROCEDURAL ORDER IN ACTIONS FOR REVIEW ON AN ADMINISTRATIVE RECORD.
Signed by Judge Williams H. Alsup on 10/1/07. (jjo, COURT STAFF) (Filed on 10/2/2007)

3:07-cv-4702 Notice has been electronically mailed to:

David Ernest Lyon dlyon@ruizlaw.com

Celia M. Ruiz cmruiz@ruizlaw.com, gtrupiano@ruizlaw.com

10/2/2007

3:07-cv-4702 Notice has been delivered by other means to:

Celia Martinez Ruiz
Ruiz & Sperow LLP
2000 Powell St #1655
Emeryville, CA 94608

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:G:\OttoliniJ\WHA\C-7-4702 WHA.Procedural Order.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=10/2/2007] [FileNumber=3796218-0]

[b0db3648233ed86482a1eef242a63139e79a2c0b0f7ce6da9625ad6cddc1f3defef97
68b2698ccd182ba2bd361b876574fa11357c2dc22b9ddeb5a5295faaa61]]

10/2/2007

EXHIBIT 2

CELIA M. RUIZ
JANICE L. SPEROW
ALISON C. NEUFELD
MARION L. McWILLIAMS
NICHOLAS T. CALDERON
DAVID E. LYON
LYNDON Y. CHEE
P. BOBBY SHUKLA
OK-HEE SHIM
DIANNA JOU
OLUWASEUN AJAYI
MATTHEW M. NAKANO - LAW CLERK
MARIA DELGADO - LAW CLERK

RUIZ & SPEROW, LLP

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4305 BEVERLY DRIVE
LA MESA, CA 91941-7818
(619) 741-7593
FAX (619) 741-7594
OUR FILE NUMBER:

OF COUNSEL:
C. MATTHEW DIDALEUSKY

December 3, 2007

Via Facsimile & E-Mail

Margaret Broussard, Esq.
Law Offices
Suite 112, 7909 Walerga Road, PMB 1157
Antelope, California 95843

*Re: Scheduling of Appeals in San Rafael City Schools v. Office of
Administrative Hearings, Case No. C07-04702WHA, and TM v. San Rafael City
Schools, Case No. C07-5751.*

Dear Ms. Broussard:

I write to meet and confer regarding the scheduling of the dates for the appeal process in the above referenced cases. As you acknowledge in your motion for consolidation of TM's appeal with the appeal of San Rafael, the fact that both appeals are from the same decision argues for consolidation of those matters, and a coordination of the dates for submission of motions for summary judgment.

Accordingly, I write to suggest that meet and confer regarding such a schedule and then address the matter with the court.

I would propose that we submit simultaneous cross-appeals for summary judgment on January 11, with oppositions due on February 8, and reply briefs due on February 22, 2008. Please let me know if you will agree to that schedule.

As it now stands, your apparent holding of the transcript for approximately one month, and filing of it with your answer during the middle of my noticed two week vacation deprives me of about 25% of the time allowed me to fully prepare my summary judgment motion.

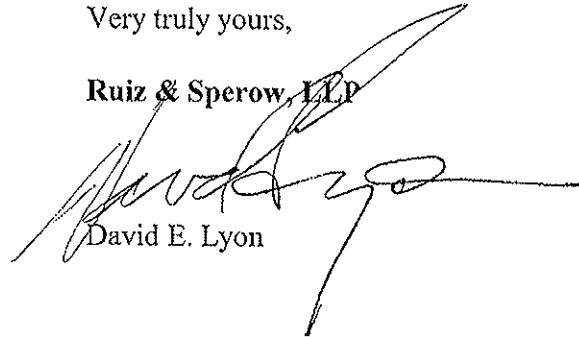
Secondly, I understand that you requested a certified transcript from the Office of Administrative Hearings, and that such a transcript was provided to you by certified mail on October 26, 2007. We were never copied on any of that correspondence, and were not provided a copy of the transcript.

Margaret Broussard
December 3, 2007
Page 2

Please immediately provide me a copy of that correspondence and transcript. Thank you for your prompt attention to this.

Very truly yours,

Ruiz & Sperow, LLP

A handwritten signature in black ink, appearing to read "David E. Lyon", is written over the printed name. The signature is stylized with a large, sweeping initial "D" and a long horizontal stroke at the end.

David E. Lyon

EXHIBIT 3

David Lyon

From: David Lyon
Sent: Tuesday, December 04, 2007 11:56 AM
To: 'Pegthelawyer@aol.com'
Cc: Gretchen Trupiano; file
Subject: 9194 Scheduling and Transcript Response

Ms. Broussard,

We have never received a transcript of the due process hearing in this matter from the OAH or anyone else.

In any event, you are under an obligation to serve us a copy of the administrative record. Please let me know if you continue to refuse to provide us a copy of it, or if you will agree to properly serve it when you intend to do so.

David Lyon

From: Pegthelawyer@aol.com [mailto:Pegthelawyer@aol.com]
Sent: Tuesday, December 04, 2007 11:42 AM
To: David Lyon
Subject: Scheduling and Transcript Response

Mr. Lyon,

I am in receipt of your letter dated December 3, 2007 regarding scheduling and transcripts in the Federal Appeals.

First, we are unable to agree to any extensions in this case since the District has not paid my clients the amounts awarded them under the administrative decision, nor posted the required bond which would absolve them from payment during the pendency of the proceedings. Time is of the essence in this case and we believe that this matter should be adjudicated as quickly as possible.

Second, pursuant to the Court's order, I lodged a copy of the transcript and the answer in this case within the 90 day timeline. The Office of Administrative Hearings told me that you asked for and received a copy of the transcript in this case after the close of evidence and prior to the filing of closing arguments, which you never provided to me.

After receiving notice that your client was appealing the administrative decision, I also requested a copy of the transcripts. If you need an additional copy of the official transcript for your records for some reason, you may either contact OAH to obtain the same copy that I did, or you can arrange to have someone meet me in my office and make a copy. Please let me know if you would like to make arrangements to have someone meet me to make a copy.

Thank you for your attention to this matter.

Margaret Broussard

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12/6/2007

David Lyon

From: David Lyon
Sent: Tuesday, December 04, 2007 12:22 PM
To: 'Pegthelawyer@aol.com'
Subject: RE: 9194 Scheduling and Transcript Response

Ms. Broussard,

We have never received a transcript. CD recordings are not transcripts, which are written documents transcribing oral or recorded information.

Service on opposing counsel of all papers filed with the court is standard practice, and there is no exception otherwise. I take your response as a refusal to send us the administrative record.

David Lyon

From: Pegthelawyer@aol.com [mailto:Pegthelawyer@aol.com]
Sent: Tuesday, December 04, 2007 12:17 PM
To: David Lyon
Subject: Re: 9194 Scheduling and Transcript Response

OAH informed me that you chose to request and you received a transcript of the hearing prior to the submission of closing arguments. It my understanding that you chose to request the transcript in CD format instead of a written format.

Please cite the local rule or other rule which would require my client to bear the cost of copying and sending the 1800 page written transcript to your office. Local Rule 16-5 - only states that I must lodge the transcript with the court, which I did.

You can get a copy from OAH or get one from me, however, your client must bear the costs of the copy. I can make them available as early as this afternoon.

Peggy Broussard

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David Lyon

From: David Lyon
Sent: Tuesday, December 04, 2007 12:37 PM
To: 'Pegthelawyer@aol.com'
Cc: Gretchen Trupiano; file
Subject: RE: 9194 Scheduling and Transcript Response

Ms. Broussard, If you're not refusing to send it then please send it to us as soon as possible. I do not believe there is any authority that requires me to reimburse you for service of your pleadings. Costs, of course, are awarded toward the end of a litigation matter. Thank you, David Lyon

From: Pegthelawyer@aol.com [mailto:Pegthelawyer@aol.com]
Sent: Tuesday, December 04, 2007 12:33 PM
To: David Lyon
Subject: Re: 9194 Scheduling and Transcript Response

I am not refusing to send it, I am merely taking the position that your client should pay for the copying and mailing since you have the same opportunity to obtain the transcript as my client does.

Peggy Broussard

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David Lyon

From: David Lyon
Sent: Tuesday, December 04, 2007 1:14 PM
To: 'Pegthelawyer@aol.com'
Cc: Gretchen Trupiano; file
Subject: RE: 9194 Scheduling and Transcript Response

Ms. Broussard,

This OAH transcript request form you attached in a later email does not address your service obligations when filing documents with the court. It is those service obligations attendant to the litigation process, which require your service of documents on the opposing party.

David Lyon

From: Pegthelawyer@aol.com [mailto:Pegthelawyer@aol.com]
Sent: Tuesday, December 04, 2007 12:36 PM
To: David Lyon
Subject: Re: 9194 Scheduling and Transcript Response

Here is information from OAH regarding the availability to both parties of the transcripts.

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David Lyon

From: David Lyon
Sent: Tuesday, December 04, 2007 2:25 PM
To: 'Pegthelawyer@aol.com'
Cc: Gretchen Trupiano; file
Subject: RE: 9194 Scheduling and Transcript Response

Ms. Broussard,

Regarding your obligation to serve us with a copy of the administrative record, I would also direct you to the court's "Procedural Order in Actions for Review On an Administrative Record," ("Scheduling Order"), dated October 1, 2007, which requires that "Defendant shall serve and file *an answer, together with a certified copy of the transcript of the administrative record*, within ninety days of receipt of service of the summons and complaint." Until you serve us with the administrative record, the running time for the filing of our summary judgment motion has not begun. Relatedly, if you fail to serve it within the 90 day period specified you will be in violation of the court's order.

David Lyon

From: David Lyon
Sent: Tuesday, December 04, 2007 1:14 PM
To: 'Pegthelawyer@aol.com'
Cc: Gretchen Trupiano; file
Subject: RE: 9194 Scheduling and Transcript Response

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